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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2007-0117]

RIN 0579-AC90

Importation of Wooden Handicrafts from China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to provide for the importation of wooden handicrafts from China under certain conditions. From 2002 to 2005, the Animal and Plant Health Inspection Service (APHIS) issued more than 300 emergency action notices and conducted national recalls to remove infested Chinese-origin wooden handicrafts from the U.S. marketplace. In 2005, APHIS suspended the importation of certain wooden handicrafts until we could more fully analyze the pest risks associated with those articles. Based on evidence from a pest risk analysis, APHIS has determined that these articles can be safely imported from China, provided certain conditions are met. This action allows for trade in Chinese wooden handicrafts to resume while continuing to protect the United States against the introduction of plant pests.

EFFECTIVE DATE: [Insert date 60 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. John Tyrone Jones, Trade Director (Forestry Products), Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231; (301) 734-8860.

## SUPPLEMENTARY INFORMATION:

### Background

The regulations in “Subpart-Logs, Lumber, and Other Unmanufactured Wood Articles” (7 CFR 319.40-1 through 319.40-11, referred to below as the regulations) govern the importation of various logs, lumber, and other unmanufactured wood products into the United States. Under § 319.40-9 of the regulations, all regulated articles must be inspected at the port of first arrival. If a regulated article shows any signs of pest infestation, the inspector may require treatment, if an approved treatment exists, or refuse entry of the consignment.

Prior to 2005, wood decorative items and craft products (wooden handicrafts) from China had been entering the United States in increasing quantities. However, between 2002 and 2005, the Animal and Plant Health Inspection Service (APHIS) issued more than 300 emergency action notices for wooden handicrafts from China. Moreover, in 2004, the United States Department of Agriculture (USDA) intercepted live wood-boring beetles, Callidiellum villosulum (Coleoptera: Cerambycidae), on articles manufactured from wood components and imported from China. Subsequent to these interceptions, shipments of the articles were recalled from retail stores. Based on these pest interceptions, in 2005, we suspended the importation of most wooden handicrafts (i.e., all handicrafts made from wooden logs, limbs, branches, or twigs greater than 1 centimeter in diameter) from China until a more thorough evaluation of the pest risks associated with those articles could be conducted.

APHIS prepared a pest risk assessment, titled “Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States,” to evaluate the risks associated with the importation of such wooden handicrafts into the United States from China. We also prepared a risk management document, titled “Pests and mitigations for

manufactured wood décor and craft products from China for importation into the United States,” to determine mitigations necessary to prevent pest entry, introduction, or establishment associated with imported wooden handicrafts from China. Based on the conclusions in the pest risk assessment and the accompanying risk management document, we determined that wooden handicrafts could be imported from China provided they met certain requirements for treatment, issuance of a phytosanitary certificate, inspection, and box identification.

Accordingly, on April 9, 2009, we published in the Federal Register (74 FR 16146-16151, Docket No. APHIS-2007-0117) a proposal<sup>1</sup> to authorize the importation of wooden handicrafts from China under those conditions. We solicited comments concerning the proposed rule for 60 days ending June 8, 2009. We received eight comments by that date. They were from the national plant protection organization (NPPO) of China, a State department of agriculture, manufacturers of Chinese wooden handicrafts, a public advocacy organization, and private citizens.

One of the commenters urged us to finalize the proposed rule without change. The remaining commenters provided comments on the rule in general, and requested modifications to certain of its provisions.

Based on one of the comments received on the proposed rule, on September 23, 2010, we published in the Federal Register a supplemental proposal (75 FR 57864-57866, Docket No. APHIS-2007-0117) to modify the heat treatment requirements of the proposed rule. We solicited comments concerning the supplemental proposal for 60 days ending November 22, 2010. We received six comments by that date. They were from State Departments of Agriculture, a manufacturer of wooden picture frames, and two private citizens.

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<sup>1</sup> To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2007-0117>.

The comments on both the proposed rule and the supplemental proposal are discussed below by topic.

#### General Comments on the Proposed Rule

One commenter stated that the measures that we proposed for Chinese wooden handicrafts were not the least restrictive necessary to mitigate the plant pest risk associated with such articles. As a result, the commenter stated that the proposed rule violated World Trade Organization principles.

The provisions of the proposed rule reflect the substantive plant pest risk that wooden handicrafts from China have historically presented, our analysis of the quarantine pests currently known to exist in China, and our determination regarding the likelihood that the importation of wooden handicrafts from China will present a pathway for introducing or disseminating these pests within the United States. Accordingly, the provisions represent the least restrictive measures that we considered possible at the time that we initiated rulemaking for the proposed rule.

That said, in response to comments received on the proposed rule, we issued the supplemental proposal mentioned above to propose to modify the heat treatment requirements of the proposed rule. We have also determined that one other provision of the proposed rule, which would have required the handicrafts to be accompanied by a phytosanitary certificate issued by the NPPO of China and containing an additional declaration stating that the handicrafts were treated in accordance with the regulations and found free from quarantine pests, is unnecessary. We discuss this change in greater detail later in this document, in the section titled “Comments Regarding Phytosanitary Certificates.”

One commenter stated that it appeared that the greatest remedial measure APHIS would take in response to violations of the proposed rule would be to prohibit the importation of wooden handicrafts from certain manufacturers into the United States. The commenter expressed concern that this would not be a sufficient incentive for manufacturers to adhere to the provisions of the proposed rule, given that these manufacturers currently have little to no access to the U.S. market.

Under the regulations, all wooden handicrafts from China would have to be accompanied by a permit stating the intended treatment for the articles, as well as an importer document or certificate stating that the intended treatment has in fact been applied to the articles. In response to inaccuracies on a permit, importer document, or certificate, APHIS may determine not to accept any further certificates from China, or may not allow the importation of any further wooden handicrafts or regulated articles from China until corrective action acceptable to APHIS establishes that certificates issued in China are accurate. We consider the possibility of such general prohibitions a sufficient incentive for Chinese manufacturers to adhere to the provisions of this rule.

We discuss these possible remedial measures at greater length later in this document, in the section titled “Comments Regarding Phytosanitary Certificates.”

One commenter suggested that the scope of the final rule be expanded to include wooden handicrafts from other countries. The commenter asserted that many countries have plant pests that are identical or similar to those found in China.

To date, only wooden handicrafts from China have been determined to be infested with quarantine pests as a result of an inspection at a port of first arrival. If, in the future, an inspector discovers quarantine pests in or on handicrafts from another country, he or she will prohibit their

entry into the United States subject to remedial measures. As a result of such a detection, APHIS may prohibit further importation of all such handicrafts from that country, pending completion of a pest risk analysis. If this analysis concludes that subjecting the handicrafts to the same mitigation measures that we are requiring for wooden handicrafts from China will adequately mitigate the risk associated with their importation, we will initiate rulemaking to amend the regulations accordingly.

One commenter stated that we should take into consideration the potential environmental impact associated with the importation of wooden handicrafts from China.

We evaluated these possible impacts in the environmental assessment that accompanied the proposed rule. Based on the comments we received, we are issuing a finding of no significant impact along with this final rule.

Finally, the NPPO of China requested that we delay the effective date of this rule for one year in order to give the NPPO sufficient time to establish internal policies and procedures to facilitate manufacturers' compliance with the rule's provisions. The NPPO also requested that, during this delay, we authorize the importation of wooden handicrafts from China under the conditions for importation that were in effect prior to 2005.

Because of the significant plant pest risk associated with the importation of wooden handicrafts from China, as evidenced by the more than 300 emergency action notices we issued for such handicrafts between 2002 and 2005, we cannot authorize the importation of wooden handicrafts from China under conditions other than those of this final rule, and, accordingly, cannot grant such a delayed implementation date.

### Comments Regarding Proposed Definitions

Section 319.40-1 contains definitions for certain terms used in the regulations pertaining to logs, lumber, and other wood articles. We proposed to add a new definition to this section for wooden handicraft. We proposed to define a wooden handicraft as a commodity class of regulated articles derived or made from natural components of wood, twigs, and vines, and including bamboo poles and garden stakes. The proposed definition provided that handicrafts included the following products where wood is present: Carvings, baskets, boxes, bird houses, garden and lawn/patio furniture (rustic), potpourri, artificial trees (typically artificial ficus trees), trellis towers, garden fencing and edging, and other items composed of wood.

We also proposed to revise the definition of regulated article so that articles that contain parts that are either unprocessed or have received only primary processing and are not feasibly separable from the other parts of the articles would be considered regulated articles for the purposes of the regulations. We stated that wooden handicrafts, as we proposed to define them, would always contain such unprocessed or partially processed parts.

It was within the framework of these definitions that we proposed to add a new paragraph (o) to § 319.40-5, which contains importation requirements for specified regulated articles, to authorize the importation of wooden handicrafts from China.

One commenter stated that the definition of wooden handicraft was too broad, and would subject wooden handicrafts from China that are currently authorized for importation into the United States to the provisions of the proposed rule. The commenter suggested that we modify the proposed definition to include only those wooden handicrafts currently prohibited importation into the United States from China, that is, handicrafts more than 1 centimeter in diameter.

We agree with the commenter that the proposed rule would have regulated handicrafts 1 centimeter or less in diameter, and that such handicrafts are currently authorized for importation into the United States.

However, we do not consider it necessary to revise our definition of wooden handicraft in the manner requested by the commenter. The definitions in § 319.40-1 are intended to have general applicability within the subpart, and it is possible that we will initiate rulemaking at some future point to restrict the importation of wooden handicrafts from another country in which quarantine pests are determined to infest handicrafts less than 1 centimeter in diameter. Moreover, if we revised the definition of wooden handicraft to state that it only includes items more than 1 centimeter in diameter, this could be construed to exempt handicrafts less than 1 centimeter in diameter from the definition of regulated article. This is not the case; although such handicrafts are exempt from the requirements of § 319.40-5(o), they are regulated articles, and thus are subject to all other applicable provisions of the subpart.

Accordingly, we have instead decided to modify proposed § 319.40-5(o) to state that the provisions of that paragraph apply only to wooden handicrafts from China that are more than 1 centimeter in diameter, and that articles less than 1 centimeter in diameter, although exempt from the requirements of § 319.40-5(o), are still subject to all other applicable provisions of 7 CFR chapter III.

Two commenters stated that they manufactured wooden handicrafts that fell within the definition of wooden handicrafts, but not the definition of regulated article. The commenters stated that these articles had wooden parts, but that the parts were fully, rather than partially, processed. Both commenters asked if their products would be regulated under the provisions of the proposed rule.



Wooden handicrafts are a class of regulated articles. Accordingly, we will consider an article to be a wooden handicraft only if it also meets the definition of regulated article. Thus, the commenters' products would be exempt from the provisions of this rule.

The same commenters stated that they manufactured handicrafts that fell within the scope of both wooden handicraft and regulated article, but that these handicrafts presented a minimal pest risk and should therefore be exempt from the requirements of § 319.40-5(o).

As we pointed out in our proposed rule, Chinese wooden handicrafts have historically been a pathway for the introduction of quarantine pests into the United States. Based on this plant pest risk and the findings of our pest risk assessment, it would be not be appropriate to exempt certain wooden handicrafts from China from the provisions of the regulations. Indeed, one of these commenters implied that quarantine pests are occasionally discovered on wooden handicrafts at its production facility.

#### Comments Regarding Heat Treatment

In proposed § 319.40-5(o)(1)(i), we stated that wooden handicrafts would have to be treated with heat treatment in accordance with § 319.40-7(c) or heat treatment with moisture reduction in accordance with § 319.40-7(d). At the time the proposed rule was published, § 319.40-7(c) provided that heat treatment may take place only at a facility where APHIS or an inspector authorized by the Administrator and the national government of the country in which the facility is located has inspected the facility and determined that its operation complies with the treatment specifications as follows: Heat treatment procedures may employ steam, hot water, kilns, exposure to microwave energy, or any other method (e.g., the hot water and steam techniques used in veneer production) that raises the temperature of the center of each treated

regulated article to at least 71.1 °C (160 °F) and maintains the regulated article at that center temperature for at least 75 minutes.

Similarly, at the time our proposed rule was published, § 319.40-7(d) provided that heat treatment with moisture reduction may include kiln drying conducted in accordance with the schedules prescribed for the regulated article in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which we have incorporated by reference at § 300.2, or dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 71.1 °C (160 °F), maintains the regulated articles at that center temperature for at least 75 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter.

A commenter suggested that APHIS authorize the NPPO of China to approve heat treatment facilities.

Under § 305.8, which contains general heat treatment requirements for 7 CFR chapter III, all heat treatment facilities must be certified by APHIS and facilities located outside the United States must operate in accordance with workplan signed by a representative of the heat treatment facilities located outside the United States, the NPPO of the country of origin, and APHIS. The workplan must contain requirements for equipment, temperature, water quality, circulation, and other measures to ensure that heat treatments are administered properly. Workplans for facilities outside the United States must include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Workplans must also allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

Given these requirements, the NPPO of China will play a significant role, along with APHIS, in the process of certifying heat treatment facilities.

Two commenters stated that the moisture of a regulated article can be reduced to 20 percent or less by a number of means other than heat treatment with moisture reduction, such as drying the article for 24 hours. The commenters suggested that we modify the regulations to incorporate these alternate moisture reduction techniques.

Moisture reduction, in and of itself, is not an adequate mitigation measure for wooden articles. It is efficacious only in conjunction with heat treatment.

One commenter asked whether handicrafts made entirely from lumber that has been treated with heat treatment prior to processing would have to be treated a second time, while another stated that handicrafts that have been treated with heat treatment as part of their partial processing should not have to be treated a second time prior to exportation.

Provided that the lumber or handicrafts have been treated in an approved facility according to an authorized treatment schedule and provided that they have been stored, handled, and safeguarded since treatment in a manner that excludes infestation of the lumber or handicrafts by plant pests, the handicrafts would not have to be treated a second time.

Finally, a commenter pointed out that the proposed rule would require most wooden handicrafts to be treated at a significantly higher temperature and for a longer duration than the temperature and duration recommended by International Standard for Phytosanitary Measures (ISPM) 15, which recommends that wood packaging material (WPM) be treated according to a heat treatment schedule that raises the temperature at the center of the WPM to at least 56 °C and maintains the WPM at that center temperature for at least 30 minutes.<sup>2</sup> The commenter suggested that we should modify the proposed heat treatment requirement for Chinese wooden handicrafts to make it consistent with ISPM 15.

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<sup>2</sup> To view ISPM 15, go to:

[https://www.ippc.int/index.php?id=13399&tx\\_publication\\_pi1\[showUid\]=133703&frompage=13399&type=publication&subtype=&L=0#item](https://www.ippc.int/index.php?id=13399&tx_publication_pi1[showUid]=133703&frompage=13399&type=publication&subtype=&L=0#item).

In response to this comment, we reviewed the relevant scientific literature, and determined that treatment consistent with ISPM 15, although effective in neutralizing most of the pests of greatest concern identified in the pest risk assessment as likely to follow the pathway on imported wooden handicrafts from China, would not be effective for emerald ash borer (EAB). Because EAB is an extremely destructive pest, we determined that treatment consistent with ISPM 15 would not adequately mitigate the pest risk.

However, an article by Scott Myers et al. titled “Evaluation of Heat Treatment Schedules for Emerald Ash Borer (Coleoptera: Buprestidae)” in the December 2009 issue of Journal of Economic Entomology<sup>3</sup> led us to reevaluate the treatment schedule in the proposed rule. Myers et al. documented four independent experiments to determine the minimum core temperature and time duration necessary to neutralize EAB on firewood via heat treatment or heat treatment with moisture reduction. As part of the experiments, researchers obtained ash wood from trees showing visible signs of EAB infestation, split the wood, and stored it. They then heat-treated the articles in laboratory facilities (a drying oven and an environmental chamber) at temperatures and durations ranging from 45 to 65 °C and 15 to 60 minutes, respectively. Myers et al. found that the experiments suggested that “a minimum heat treatment of 60 °C for 60 minutes...would provide >99.9% control (for EAB) based on probit estimates.”

Since firewood presents similar or greater plant pest risks than wooden handicrafts, we determined that the Myers et al. findings were applicable to wooden handicrafts from China.

This determination led us to issue the September 2010 supplemental proposal. In it, we proposed to modify proposed § 319.40-5(o)(1)(i) to state that wooden handicrafts would have to

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<sup>3</sup> Myers, Scott, Ivich Fraser, and Victor Mastro, “Evaluation of Heat Treatment Schedules for Emerald Ash Borer (Coleoptera: Buprestidae)”, Journal of Economic Entomology, 102:6 (December 2009), 2048-2055. Referred to below as “Myers et. al.”

be treated as specified in the PPQ Treatment Manual<sup>4</sup> in accordance with 7 CFR part 305, and to add heat treatment that raises the core temperature of handicrafts to 60 °C for a duration of 60 minutes to the PPQ Treatment Manual as an approved treatment schedule for wooden handicrafts from China.

One commenter agreed that Myers *et al.* did in fact provide a basis for such a modification.

In contrast, another commenter raised numerous concerns regarding the appropriateness of our use of Myers *et al.* as the basis for modifying our proposed heat treatment requirements for wooden handicrafts from China. The commenter pointed out that Myers *et al.* only sought to determine the minimum heat treatment necessary to neutralize EAB. The commenter stated that, because of its morphology and burrowing patterns, EAB is more susceptible to heat treatment than other plant pests in the families Cerambycidae and Siricidae identified in the pest risk assessment as possibly following the pathway on wooden handicrafts from China.

The commenter provided no information in support of this assertion. Moreover, as documented in the treatment evaluation document that accompanied the supplemental proposal, all scientific evidence available to APHIS suggests that heat treatment consistent with ISPM 15—that is, treatment at a lower temperature and duration than that specified in our supplemental proposal—will kill all other pests identified in the pest risk assessment as likely to follow the pathway on wooden handicrafts from China.

The commenter pointed out that the kilns used by Myers *et al.* were relatively small, as was the volume of firewood heat-treated in the experiments. The commenter then referred to an article in the October 2010 issue of the Journal of Economic Entomology by P. Charles Goebel

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<sup>4</sup> The Treatment Manual is available on the Internet, at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

et al.<sup>5</sup> as providing evidence that larger volumes of wood products in larger kilns tend to heat more unevenly than smaller products in smaller kilns, and stated that Chinese wooden handicrafts would likely be treated en masse in large-scale kilns. For this reason, the commenter stated that the treatment methods and apparatus employed by Myers et al. fundamentally differed from those that manufacturers of Chinese handicrafts are likely to employ, and that the results of Myers et al. could therefore not be considered a reliable indicator of the efficacy of heat treatment of Chinese handicrafts under the provisions of the supplemental proposal.

Our supplemental proposal to modify the heat treatment requirements was based not on an assumption that Chinese manufacturers will reduplicate the methods of Myers et al. but on the conclusion of Myers et al. that heat treatment that “achieves a temperature of 60 °C for 60 minutes...would provide >99.9% control (for EAB),” and on our evaluation of the accuracy of the probit estimates that led to this conclusion. (A probit refers to a unit of measurement of statistical probability based on deviations from the normal distribution of results. Probit estimates are often used within statistics to assess the risk of an event occurring in comparison to the likelihood that it will not occur.)

Moreover, as we mentioned above, the regulations require all heat treatments that occur in a foreign country to take place in a facility certified by APHIS, and specify that certification is, in part, predicated upon a facility’s having equipment able to meet treatment schedule parameters. This aspect of the certification process would include evaluating the suitability of any large-scale kilns at the facility for conducting the requisite heat treatment.

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<sup>5</sup> Goebel, P. Charles, Matthew Bumgardner, Daniel Herms, and Andrew Sabula, “Failure to Phytosanitize Ash Firewood Infested with Emerald Ash Borer in a Small Dry Kiln Using ISPM 15 Standards,” *Journal of Economic Entomology*, 103:3 (October 2010), 597-602. Available on the Internet at [http://www.nrs.fs.fed.us/pubs/jrnl/2010/nrs\\_2010\\_goebel\\_001.pdf](http://www.nrs.fs.fed.us/pubs/jrnl/2010/nrs_2010_goebel_001.pdf). Referred to below as “Goebel et al.”

The same commenter pointed out that the conclusion of Myers et al. was based on probit estimates and mathematical regression, rather than on the actual results of a full range of experiments. The commenter pointed out that Myers et al. did not repeatedly treat firewood at 60 °C for 60 minutes in order to establish the efficacy of such a treatment and questioned the reliability of probit estimates.

In evaluating heat treatment schedules, probit estimates are intended to provide, not the minimum temperature and time duration that may achieve 100 percent mortality of a quarantine pest, but the minimum temperature and time duration that will prove efficacious in doing so with a high degree of statistical reliability. In other words, treatment schedules established through probit estimates are, by design, more conservative, both in temperature and duration, than schedules established through simple reduplication of a particular experiment in order to achieve a minimal efficacious treatment schedule.

The commenter stated that, based on their experiments, Goebel et al. determined that heat treatment at 56 °C for a duration of 82 minutes was not an effective treatment schedule for EAB. The commenter asserted that this determination called into question the efficacy of heat treatment at 60 °C for a duration of 60 minutes for EAB.

The efficacy of heat treatment as a mitigation for a particular pest is dependent not only on the duration of the treatment, but also on the temperature it achieves in the treated article. Accordingly, Goebel et al.'s determination does not necessarily contradict the determination of Myers et al. Moreover, the commenter provided no scientific basis for considering the determinations contradictory.

The same commenter stated that heat treatment at 60 °C for a duration of 60 minutes would not be effective in killing certain types of phytopathogenic fungi.

Phytopathogenic fungi were determined to be likely to follow the pathway on wooden handicrafts from China only if they were introduced by an arthropod vector. Arthropods that could serve as such vectors were considered in the pest risk assessment.

Finally, the commenter stated that heat treatment consistent with ISPM 15 would not be efficacious in treating wooden handicrafts from China for all quarantine pests likely to follow the pathway on the handicrafts.

We agree with the commenter. That is why we proposed to require a more stringent treatment.

As we mentioned in the supplemental proposal, we published a final rule in the Federal Register on January 26, 2010 (75 FR 4228-4253, Docket No. APHIS-2008-0022), that was effective on February 25, 2010, and that, among other things, removed all treatment schedules found in 7 CFR chapter III, including those in § 319.40-7(c) and (d). It replaced all such schedules with a reference to 7 CFR part 305, which contains our regulations governing phytosanitary treatments. Last, it amended 7 CFR part 305 itself to state that all approved treatment schedules for regulated articles are found not in the regulations but in the PPQ Treatment Manual, and to establish a process for adding new treatment schedules for regulated articles to the Treatment Manual.

In accordance with this process, we are modifying proposed § 319.40-5(o)(1) to state that wooden handicrafts from China must be treated as specified in the PPQ Treatment Manual in accordance with 7 CFR part 305. We have also added the relevant treatment schedules for the handicrafts to the Treatment Manual; the schedules for heat treatment and heat treatment with moisture reduction specify that the treatment must raise the core temperature of the handicrafts to 60 °C for a duration of 60 minutes.



### Comments Regarding Treatment with Methyl Bromide

In proposed § 319.40-5(o)(1)(ii), we stated that wooden handicrafts that are less than 6 inches in diameter may be treated with methyl bromide fumigation in accordance with 7 CFR part 305, instead of with heat treatment or heat treatment with moisture reduction.

Several commenters stated that methyl bromide is known to deplete the stratospheric ozone layer, and that authorizing its use for treating Chinese wooden handicrafts violates the Montreal Protocol, in which the United States agreed to gradually reduce and ultimately eliminate use of methyl bromide. Another commenter stated that, while the number of applications of methyl bromide that would initially occur under the provisions of the proposed rule would likely be minimal, as the U.S. market for Chinese wooden handicrafts became more established and trade in those commodities increased, the number of applications would also increase. The same commenter stated that such an increase in trade with China could lead other countries to request that APHIS authorize the use of methyl bromide for similar regulated articles. All these commenters asked APHIS not to authorize the use of methyl bromide for wooden handicrafts from China, and to pursue alternate treatment options.

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. As stated in the proposed rule, APHIS would allow fumigation only for a certain type of wooden handicrafts from China, those less than 6 inches in diameter. All other handicrafts would have to be treated with heat treatment or heat treatment with moisture reduction. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions.

However, paragraph 5 of Article 2H of the Montreal Protocol does allow for quarantine and preshipment uses of methyl bromide, and does not specify a maximum number of such applications. Therefore, the provisions of this rule are not in conflict with the protocol.

Finally, in accordance with the overarching objectives of the protocol, APHIS is currently examining the efficacy of other treatment options for Chinese wooden handicrafts. If we determine that treatments exist that are equally efficacious and are available within China, we will amend the Treatment Manual.

One commenter expressed concerns about the human health impacts associated with the use of methyl bromide. The commenter stated that methyl bromide is known to be a carcinogen, skin and lung irritant, and neurotoxin if persons are exposed to it for prolonged periods of time. In a similar manner, another commenter suggested that we modify the proposed rule so that methyl bromide fumigation may only take place in an approved facility that adheres to stringent human health standards.

APHIS' statutory authority extends only to establishing regulations to mitigate the plant pest risk associated with the importation of plants and plant products into the United States. Accordingly, it is the responsibility of the Chinese government to establish and enforce human health standards regarding the safe use of methyl bromide.

Accordingly, based on our evaluation of the issue, we have decided to approve methyl bromide fumigation as a treatment for wooden handicrafts from China that are less than 6 inches in diameter, and have added this treatment to the Treatment Manual. However, because, as we mentioned above, we are currently examining the efficacy of other treatment options for Chinese wooden handicrafts, § 319.40-5(o)(1), as finalized, does not make explicit reference to any one treatment option for the handicrafts. Such a modification will allow us to use the approach

established by the January 26, 2010, final rule to add any new treatment schedules that we determine to be efficacious for Chinese wooden handicrafts to the Treatment Manual through publishing notices in the Federal Register, rather than through rules.

#### Comments Regarding Phytosanitary Certificates

In proposed § 319.40-5(o)(2), we stated that all consignments of wooden handicrafts would have to be accompanied by a phytosanitary certificate issued by the NPPO of China, and that the certificate would have to contain an additional declaration stating that the handicrafts were treated in accordance with § 319.40-5 and inspected and found free from quarantine pests.

Two commenters stated that the certificate would duplicate existing documentation required under the regulations, and therefore should not be required.

In response to these comments, we reexamined the proposed provision in light of existing regulations within the subpart. In § 319.40-2(a), we require a specific permit to be issued in accordance with § 319.40-4 prior to the importation of a regulated article, unless the article is imported for propagation or human consumption, or is authorized importation under a general permit. Section 319.40-4 sets forth the procedure for applying for a specific permit. As part of this procedure, we require that each application include a description of any treatment to be performed prior to importation, including the location where the treatment will be performed, as well as the name and address of the importer of record.

Similarly, in § 319.40-2(b), we require an importer document or certificate to accompany all regulated articles, unless the article is imported for propagation or human consumption, or is authorized importation under a general permit. This importer document or certificate must state the treatment performed on the article prior to arrival at the point of first arrival.

Wooden handicrafts from China are not imported for propagation or human consumption, and are not authorized importation under a general permit. Hence, each importation of wooden handicrafts from China must be authorized under a specific permit and accompanied by an importer document or certificate.

Finally, § 319.40-7 sets forth treatment requirements for regulated articles. Paragraph (a) of that section provides that, in response to inaccuracies on a document accompanying a regulated article, APHIS may determine not to accept any further certificates for the importation of regulated articles from that country, or may not allow the importation of any or all regulated articles from the country until corrective action acceptable to APHIS establishes that certificates issued in the country are accurate.

Collectively, these requirements provide APHIS with information regarding the treatment applied to wooden handicrafts from China, a responsible party in the event that any imported handicrafts are determined to be infested with quarantine pests, and sufficiently stringent remedial measures to deter parties from providing inaccurate information on documents associated with the importation. As a result, we do not consider a phytosanitary certificate necessary, and are not including that requirement in this final rule.

Three commenters stated that China has repeatedly authorized the export of contaminated or infested commodities in recent years. One of these commenters stated that Chinese officials are not concerned with the veracity of information on documents pertaining to the importation of these commodities. All the commenters stated that APHIS should not allow the NPPO of China to issue phytosanitary certificates, but should instead station personnel in China to monitor all treatments of wooden handicrafts and inspect all consignments destined for export to the United States.

As we stated above, we consider the regulations to provide sufficient remedial measures to deter parties from providing inaccurate information on any document pertaining to the importation of wooden handicrafts from China. Moreover, we note that, under § 319.40-9, all regulated articles must be inspected at the port of first arrival. If a regulated article shows any signs of pest infestation, the inspector may require treatment, if an approved treatment exists, or refuse entry of the consignment.

#### Comment Regarding Identification Tags

In proposed § 319.40-5(o)(3), we stated that all individual packages of wooden handicrafts would have to be labeled with a merchandise tag containing the identity of the product manufacturer. We further stated that the tag would have to be applied to each package in China prior to exportation and remain attached to the package until it reaches the location at which the wooden handicraft would be sold in the United States.

Two commenters stated that they manufacture wooden handicrafts that are packaged in a manner that prevents an identification tag from being applied to the package. One of these commenters requested that APHIS provide guidance regarding how manufacturers could apply the tag to packaging in a manner that would not deter consumers from purchasing their product.

The tag must be applied to each shipping package containing wooden handicrafts, rather than to the packaging for any particular handicraft. For example, if a wooden train containing partially processed parts were sealed in a blister package in China, and a box containing several dozen of these trains were exported to the United States for sale at a toy store, the identification tag would have to be applied to the box that is shipped to the store, rather than to the individual blister packages. We have modified proposed § 319.40-5(o)(3) to clarify that it refers to shipping packages, rather than packaging.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see footnote 1 at the beginning of this document for a link to Regulations.gov).

This rule will allow for the resumption of imports of wooden handicrafts from China, provided certain conditions are met. In 2005, APHIS suspended the importation of certain wooden handicrafts until we could more fully analyze the pest risks associated with those articles. We have determined that the heat, heat with moisture reduction, and methyl bromide fumigation treatment options prescribed in this rule will sufficiently mitigate these pest risks.

Protection of U.S. forests against the introduction and spread of invasive pests is vital to the economic well-being of the forestry industries as well as to maintaining the forests'

environmental and aesthetic benefits for the general public. The hundreds of millions of dollars that have been spent to control the spread of EAB and the Asian longhorned beetle exemplify the enormous cost to the United States when invasive pests become established. This rule will establish safeguards against further incursions of wood-boring pests such as these via the importation of infested handicrafts from China, while allowing the importation of such handicrafts to resume.

U.S. entities are expected to be minimally affected by this rule. Wooden handicrafts comprised a very small fraction of wood products imported from China prior to April 2005, and similar levels of importation are expected following promulgation of this rule. Nonetheless, U.S. consumers of wooden handicrafts will benefit from reestablished access to these products from China. Treatment costs, representing on average less than 2 percent of the value of the products shipped, will be borne by firms in China, and any fraction of those costs that may be passed on to U.S. buyers will be negligible. In addition, benefits are expected to exceed costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

## National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of wooden handicrafts from China under the conditions specified in the rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.<sup>6</sup> Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

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<sup>6</sup> Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2007-0117>. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.



## Paperwork Reduction Act

This final rule does not include an information collection requirement that had been included in the proposed rule. Specifically, for the reasons described earlier in this document, this final rule does not include a requirement for the completion of phytosanitary certificates.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0357.

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

## List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

## PART 319--FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. The subpart heading for “Subpart-Logs, Lumber, and Other Unmanufactured Wood Articles” is amended by removing the word “Unmanufactured”.

3. Section 319.40-1 is amended by revising the definition of regulated article and adding, in alphabetical order, a definition for wooden handicraft to read as follows:

§ 319.40-1 Definitions.

\* \* \* \* \*

Regulated article. The following articles, if they are unprocessed, have received only primary processing, or contain parts that are either unprocessed or have received only primary processing and are not feasibly separable from the other parts of the article: Logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; litter; and wooden handicrafts.

\* \* \* \* \*

Wooden handicraft. A commodity class of articles derived or made from natural components of wood, twigs, and vines, and including bamboo poles and garden stakes. Handicrafts include the following products where wood is present: Carvings, baskets, boxes, bird houses, garden and lawn/patio furniture (rustic), potpourri, artificial trees (typically artificial ficus trees), trellis towers, garden fencing and edging, and other items composed of wood.

4. Section 319.40-5 is amended by adding a new paragraph (o) and revising the OMB citation at the end of the section to read as follows:

§ 319.40-5 Importation and entry requirements for specified articles.

\* \* \* \* \*

(o) Wooden handicrafts from China. Wooden handicrafts more than 1 centimeter in diameter may be imported into the United States from China only in accordance with this paragraph and all other applicable provisions of this title. Wooden handicrafts less than 1 centimeter in diameter are exempt from the requirements of this paragraph, but are still subject to all other applicable provisions of this chapter.

(1) Treatment. Wooden handicrafts must be treated in accordance with part 305 of this chapter.

(2) Identification tag. All packages in which wooden handicrafts are shipped must be labeled with a merchandise tag containing the identity of the product manufacturer. The identification tag must be applied to each shipping package in China prior to exportation and remain attached to the shipping package until it reaches the location at which the wooden handicraft will be sold in the United States.

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0257, 0579-0319, and 0579-0367).

Done in Washington, DC, this 27<sup>th</sup> day of February 2012.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

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